16-391

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. 117.

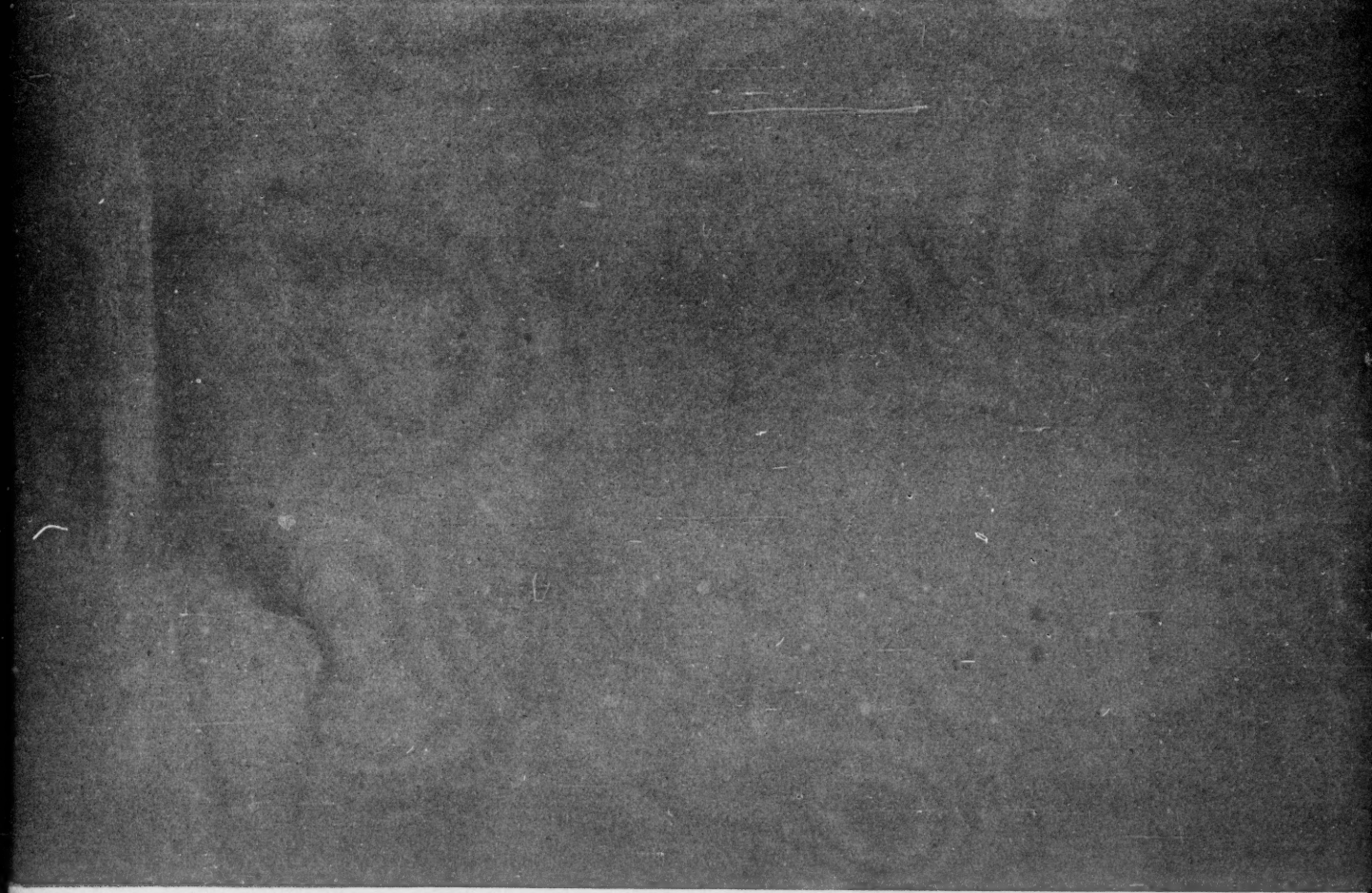
CATHARINE S. LANSDALE, ADMINISTRATRIX OF NOAH STINCHOMB, DECEASED, APPELLANT,

vs.

ADDISON M. SMITH, LETITIA ALLEN, AND SUSAN G. HALL.

APPEAL FROM THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

FILED OCTOBER 20, 1879.



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1 *Bill for specific performance.—Filed Apr. 12th, 1878.*

In the supreme court of the District of Columbia. In equity.

CATHARINE S. LANDSDALE, PLAINTIFF,
vs.
ADDISON M. SMITH, LETITIA ALLEN, SUSAN G. Hall, defendants. } No. 6203. Eq. doc.

To the supreme court of the District of Columbia, holding equity court for the said District, the plaintiff complains as follows:

1st. She is a resident of the city of Baltimore, in the State of Maryland, and is the legal personal representative of Noah Stinchomb, late of Washington, D. C., who died intestate on or about the 11th day of February, 1841.

2d. That letters of administration of the estate of said Stinchomb were granted to her by the supreme court of the District of Columbia, holding a special term, on the 12th day of March, 1878.

3rd. That the above-named defendants, Addison M. Smith, Letitia Allen, and Susan G. Hall, are citizens of the District of Columbia.

2 4th. And your complainant further says that one John P. Van Ness and Marcia, his wife, formerly of the District of Columbia, now deceased, did, by a certain deed bearing date the 18th day of July, 1818, and recorded in liber A. T. No. 44, folio 227, &c., one of the land records of said District, which deed it is prayed may be taken as a part of this bill of complaint, did devise, lease, and to farm let unto the said Noah Stinchomb, his executors, administrators, and assigns, lot No. 3, square 455, with all the privileges, advantages, & appurtenances to the same belonging for the term of ninety-nine years, fully to be completed and ended from the first of July, 1818, with the privilege at the expiration of said term of renewal forever, together with the following covenants, said Stinchomb to pay to said Van Ness, &c., the yearly rent or sum of eighty-one dollars and fifty-five cents, together with all taxes, &c., and "that if the rent or any part thereof shall be in arrears and unpaid for the space of thirty days next after the
3 time at which the same is to be paid as above, being first lawfully demanded, that then it shall and may be lawful to and for the said John, his heirs and assigns, into the demised premises, or any part thereof in the name of the whole, to re-enter and the same to have again, repossess, occupy, and enjoy as in his or their former estate, until all such arrearages of rent, with legal interest from the time at which said rent shall have become payable, and all and every cost, charge, and expense incurred by reason of the non-payment of said rent, shall be lawfully satisfied and paid, or make distress therefor at his or their option. And the said Noah does for himself, his heirs, executors, administrators, and assigns, covenant and agree with the said John, his heirs and assigns, that he, the said Noah, his heirs, executors, administrators, and assigns, shall and will well and truly pay, or cause to be paid, unto said John, his heirs and assigns, that above-reserved rent
4 at the time above limited for payment of the same, and in case of non-payment of said rent, or any part thereof, at the time limited as aforesaid, shall and will also pay legal interest on the amount due from the respective days of payment on which the said rent is agreed to be paid to the said John, his heirs and assigns, and shall and will also pay all taxes, charges, and impositions accruing or to prove

due on said lot unto the proper officer authorized to collect the same; and the said John and Marcia, for themselves, their heirs & assigns, do covenant and grant to and with the said Noah, his executors, administrators, and assigns, that they, the said John and Marcia, their heirs and assigns, at any time or times hereafter during the continuance of this present demise, on the request and at the cost & charge of the said Noah, his executors, administrators, or assigns, and on his or their payment to the said John, his heirs or assigns, of the sum of one dollar, shall and will make and execute, or cause to be made and executed, a new lease of the above-demised premises for other ninety-nine years, to commence and take effect from and at the end of the term from which the same is above demised, subject to the same rent and under the like covenant as are hereinbefore mentioned, so that this present demise may be renewed and renewable forever." And that said Stinchomb entered into possession of said lot in accordance with the provisions of said deed, and held the same until about the year 1833–4.

5th. That after the lease of the said lot to the said Stinchomb and his entry thereon, the said Stinchomb expended large sums of money in improving the same; that he erected a large and commodious dwelling-house on said property, and made other and valuable improvements thereon, all of which, since the re-entry hereinafter set forth, has inured to the benefit of said John P. Van Ness, his heirs, and assigns.

6th. That in default of payment of rent, and under and by virtue of the provisions and covenants of said deed from said Van Ness to said Stinchomb, the said Van Ness re-entered and repossessed himself of said lot or parcel of ground, holding the same subject to the claim, demand, and title of said Stinchomb, or his heirs or assigns, to redeem and repossess the said premises in accordance with the covenants of said deed, as is more fully and at large set out in said deed, which it is prayed may be taken as a part hereof.

7th. That the said premises were at the death of said Van Ness, to wit, in 184 , assigned by commissioners to Matilda E. Van Ness, one of the heirs at law of said John P. Van Ness, and that said Matilda did, by deed dated and recorded in liber J. A. S. No. 11, folio 161, convey the said property to Wm. G. Deal and others, and that said defendants now hold said lot only by virtue of said assignment by said commissioners and by virtue of the deed of said Matilda E. Van Ness and her assigns.

8th. Your complainant is advised and believes, and therefore charges that as the personal representatives of said Stinchomb, deceased, she is entitled, under the provisions and covenants of said deed, to pay up the rent in arrears upon said property, the interest thereon, the taxes, and other legal charges, and to re-enter and repossess the said described premises as of the former estate of said Stinchomb.

9th. That your complainant has offered to fulfil the covenants binding said Stinchomb, and his heir' and assigns, and has offered to pay all back rents, taxes, interest, and all just costs, charges, &c., and your complainant does now offer to pay up all back rents, with interest thereon, all taxes, all legal costs and charges whatsoever that are or have accrued and fallen due upon said described premises. That the defendants have wholly refused to comply with their covenants contained in said and from said Van Ness to said Stinchomb; all of which are contrary to equity and good conscience, and tend to the manifest injury of plaintiff, who is thereby prevented from enjoying the benefit of said lands.

10th. And your complainant further says that until recently she was not aware of her rights and title to the said piece or parcel of land, and that she is a non-resident; that she was at the time of the death of her father, and is now, a resident of the city of Baltimore, State of Maryland, and that all the heirs, and persons entitled to a distributive share of said Stinchomb's estate are non-residents of said District of Columbia, residing beyond the sea, excepting Gohens, who was and is a feme covert. And that one of the sons of said Stinchomb was a minor until the year 1858, and that until the recent appointment of your complainant administratrix of the estate of said Stinchomb there was no one within the jurisdiction of this court who could prosecute this suit.

9 *Prayer.*

The plaintiff therefore prays as follows:

1. That your honors may decree and direct that the said defendant comply with the terms of said contract, and that your orator be permitted to redeem said lot No. 3, square No. 455, and to enter and repossess said lot as in &c. by said deed of lease provided.

2. That an account be taken of what is due for principal and interest by plaintiff to defendants, and also an account of all the rents and profits received by defendants from said land since their entry into possession, and that one account may be set off against the other, and that the plaintiff may have judgment accordingly.

3rd. That the defendant may be decreed to pay to the plaintiff as personal representative of said Noah Stinchomb what may be found due, together with the costs of this suit.

10 4th. That the plaintiff may have such further or other relief in the premises as the nature of the case may require.

To which end the plaintiff prays for process against the defendants Addison M. Smith, Letitia Allen and Susan G. Hall, requiring them to appear and answer the exigency of the bill.

The defendants to this bill of complaint are Addison M. Smith, Letitia Allen, and Susan G. Hall.

GEO. C. HUMES,
C. G. LEE,
Counsel for Plaintiff.

I do solemnly swear that I have heard read the bill by me subscribed, and know the contents thereof, and that the facts therein stated upon my personal knowledge are true, and that the facts therein stated upon information and belief I believe to be true.

C. S. LANSDALE,

Sworn to and subscribed before me, this 4th day of April, A. D. 1878.
SAMUEL WELLS, *J. P.* [SEAL.]

11 *Subpœna to answer.*

In the supreme court of the District of Columbia, the 12th day of April, 1878.

CATHERINE S. LANSDALE, COMPLAINANT, *against* ADDISON M. SMITH ET AL., DEFENDANTS. } No. 6203. Eq'y. Dock 18. Subpœna to answer.

The President of the United States to Addison M. Smith, Letitia Allen, Susan G. Hall, defendants:

You are hereby commanded to appear in this court at its first special

term, occuring twenty days after service of this subpœna, and answer the exigency of the bill this day filed and entitled as above, under pain of attachment and such other process of contempt as the court shall award.

Witness, D. K. Cartter, chief justice.

R. J. MEIGS, *Clerk.*
By M. A. CLANCY,
Ass't Clerk.

MEMORANDUM.—That the defendant' herewith served *is* to enter their appearance in this suit in the clerk's office, on or before the day at which this writ is returnable; otherwise the bill may be taken for confessed.

12 *Marshal's return.*

Summoned all. April 17th, 1878.

F. DOUGLASS,
Marshal.

13 *Demurrer by def't. A. M. Smith.—Filed May* 16, 1878.

In the supreme court of the District of Columbia.

CATHARINE S. LANSDALE *vs.* ADDISON M. SMITH ET AL. } No. 6203. Equity.

The demurrer of the defendant Addison M. Smith to the complainant's bill.

The defendant Addison M. Smith demurs to the bill, and says:

1. That the complainant has not by her said bill made and stated such a case as entitles her to the relief prayed, or to any relief whatever in a court of equity.

2. And further, that there is a misjoinder of parties defendant in the said bill.

EDWARDS & BARNARD,
Solicitors for Def't.

DISTRICT OF COLUMBIA, *ss:*

Addison M. Smith swears that the annexed demurrer is not interposed herein for delay.

ADDISON M. SMITH.

Subscribed and sworn to before me this 15th day of May, 1878.
WM. H. CHASE, [SEAL.]
Justice of the Peace.

14 We hereby certify that in our opinion the annexed demurrer is well founded in point of law.

EDWARDS & BARNARD,
Solicitors for Def't.

15 *Demurrer by def't S. L. Hall to bill.—Filed May 16th, 1878.*

In the supreme court of the District of Columbia.

CATHARINE S. LANSDALE
vs.
ADDISON M. SMITH ET AL. } No. 6203. Equity.

Demurrer to bill by the defendant Susan L. Hall.

The defendant Susan L. Hall demurs to the said bill of complaint herein, and says:

1. That the complainant has not by her said bill made or stated such a case as entitles her to the relief prayed, or to any relief whatever in a court of equity.

2. And further, that there is a misjoinder of parties defendant in the said bill.

EDWARDS & BARNARD,
Solicitors for Def t.

DISTRICT OF COLUMBIA, *ss:*

Susan L. Hall swears that the annexed demurrer is not interposed herein for delay.

SUSAN L. HALL.

Subscribed and sworn to before me this 16th day of May, 1878.
JAMES NICH'S CALLAN, *N. P.* [SEAL.]

We certify that in our opinion the annexed demurrer is well founded in point of law.

EDWARDS & BARNARD,
Solr's for Def't.

16 *Demurrer by def't L. Allen to bill.—Filed May 18th, 1878.*

In the supreme court of the District of Columbia.

CATHARINE S. LANSDALE.
vs.
ADDISON M. SMITH ET AL. } No. 6203. Equity.

The defendant Letitia Allen demurs to the complainant's bill, and says:

1. That the complainant has not by her said bill made or stated such a case as entitles her to the relief prayed, or to any relief whatever in a court of equity.

2. And further, that there is a misjoinder of parties defendant in the said bill.

EDWARDS & BARNARD,
Solicitors for Def't.

DISTRICT OF COLUMBIA, *ss:*

Letitia Allen swears that the annexed demurrer is not interposed herein for delay.

LETITIA ALLEN.

Subscribed and sworn to before me this 16th day of May, 1878.
R. J. MEIGS, *Clerk,*
By R. J. MEIGS, JR., *Ass't Clk.*

We certify that in our opinion the annexed demurrer is well founded in point of law.

EDWARDS & BARNARD,
Solicitors for Def't.

17 *Decree allowing demurrer to bill & dismissing bill with costs.—Filed Sep. 16th, 1878.*

In the supreme court of the District of Columbia.

CATHARINE S. LANDSDALE
vs.
ADDISON M. SMITH ET AL. } No. 6203. Equity.

This cause coming on to be heard upon the demurrers of the defendants to the bill herein, and having been heard, argued, and submitted, it is this 16th day of September, 1878, ordered, adjudged, and decreed that the said demurrers be, and they are hereby, allowed; and that the complainant's bill be, and the same is hereby, dismissed, and that the complainant pay the costs of this suit.

By the court:

MACARTHUR, *Justice.*

Appeal to general term.

The clerk will please note this cause appealed to general term Sept. 28th, 1879.

(Signed) LEE & HUME, *For Compl't.*

And thereupon the same is accordingly entered.

By the court:

18 *Decree affirming decree of special term.—Filed May 21st, 1879.*

In the supreme court of the District of Columbia, general term.

CATHARINE S. LANSDALE, ADMINISTRATRIX, &c.,
vs.
ADDISON M. SMITH ET AL. } No. 6203. Eq.

This cause coming on for hearing, and being heard, argued, submitted, and considered, it is, this 21st day of May, 1879, ordered, adjudged, and decreed that the decree of the special term appealed from dismissing the bill herein be, and the same is hereby, affirmed with costs.

By order of the court:

D. K. CARTTER,
Chief Justice.

19 *Order allowing appeal & fixing am't of bond.—Filed Jun. 30th, 1879.*

In the supreme court of the District of Columbia, sitting in general term.

CATHARINE S. LANSDALE, ADMINISTRATRIX,
vs.
ADDISON M. SMITH ET AL. } In equity. No. 6203.

Upon motion of C. G. Lee and Geo. C. Humes, solicitors for complainant, it is ordered by the court this 30th day of June, 1879, that an ap-

peal to the Supreme Court of the United States from the final decree of the supreme court of the District of Columbia, passed in aforesaid cause, be, and the same is hereby, allowed, and the amount of bond to be entered into by complainant, with proper surety, is hereby fixed at the sum of $250.00.

By the court:

W. S. COX, *Just.*

20 *Appeal bond to S. C. U. S.*

In the supreme court of the District of Columbia, the 3d day of July, 1879.

CATHARINE S. LANSDALE *vs.* ADDISON M. SMITH ET AL. } Equity. No. 6203. In error.

Know all men by these presents, that we, Catharine S. Lansdale and John W. Lansdale are bound unto the above-named Addison M. Smith and Letitia Allen and Susan G. Hall in the sum of two hundred and fifty dollars, to be paid to the said Addison M. Smith, Letitia Allen, and Susan G. Hall, their executors or administrators; to which payment, well and truly to be made, we bind ourselves, and each of us, jointly and severally, and our, and each of our, heirs, executors, and administrators firmly by these presents. Sealed with our seals, and dated this 3d day of July, 1879.

Whereas the above named Catharine S. Lansdale, administratrix, has prosecuted a suit to the Supreme Court of the United States to reverse the decree rendered in the above suit by the said supreme court of the District of Columbia:

Now, therefore, the condition of this obligation is that if the above-named Catharine S. Lansdale, administratrix, shall prosecute her said appeal to effect, and answer all damages and costs if he shall fail to make good *his* plea, then this obligation shall be void; otherwise the same shall be and remain in full force and virtue.

C. S. LANSDALE. [SEAL.]
JOHN W. LANSDALE.

Sealed and delivered in presence of—
C. G. LEE.
GEO. C. HUMES.

Approved.

A. WYLIE,
Justice, &c.

21 AUTHENTICATION OF RECORD.

Clerk's office, supreme court of the District of Columbia.

Clerk's certificate.

I, R. J. Meigs, clerk of the said court, do hereby certify that the writings annexed to this certificate are true copies of originals on file and of record in said office, and that said originals, together, constitute the record of the proceedings of said court in this cause.

Witness my hand and the seal of said court this 18th day of Oct'r, 1879.

[SEAL.] R. J. MEIGS, *Clerk*,
By R. J. MEIGS, JR., *Assistant Clerk*.

Justice's certificate.

I, David K. Cartter, chief justice of said court, do certify the foregoing attestation by R. J. Meigs, clerk of the said court, to be in due form.

Witness my hand and seal this 18 day of Oct, 1879.

D. K. CARTTER, *Chief Justice*. [SEAL.]

Clerk's certificate to justice's official character.

I, R. J. Meigs, clerk of said court, hereby certify that David K. Cartter, whose genuine signature is subscribed to the foregoing certificate, was, at the time of signing and attesting the same, chief justice of said court, duly commissioned and qualified.

Witness my hand and the seal of said court this 18th day of Oct. 1879.

[SEAL.] R. J. MEIGS, *Clerk*,
By R. J. MEIGS, JR., *Assistant Clerk*.

(Indorsement on cover:) No. 117. Catharine S. Lansdale, administratrix of Noah Stinchomb, deceased, appellant, vs. Addison M. Smith, Letitia Allen, and Susan G. Hall. District of Columbia sup. court. Filed 20th October, 1879.

16-393

SUPREME COURT, U.S.
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UNITED STATES SUPREME COURT.

OCTOBER TERM, 1881.—IN EQUITY.

CATHERINE S. LANSDALE,
Plaintiff,
vs.
ADDISON M. SMITH, LETITIA ALLEN AND SUSAN G. HALL,
Defendants.
No. 392.

TH. JESUP MILLER,
R. B. LEWIS,
CAZENOVE G. LEE,
Solicitors for Complainant.

R. O. POLKINHORN, PRINTER.

UNITED STATES SUPREME COURT.

OCTOBER TERM, 1881.—IN EQUITY.

CATHERINE S. LANSDALE,
Plaintiff,
vs.
ADDISON M. SMITH, LETITIA ALLEN AND SUSAN G. HALL,
Defendants.
No. 392.

Facts alleged in the Bill.

Plaintiff sues as administratrix of Noah Stinchcomb, deceased, who died intestate, February 11, 1841.

Letters of administration were granted complainant on the 12th of March, 1878, in the District of Columbia.

Noah Stinchcomb leased by deed duly recorded from John Van Ness and wife, the premises in controversy, (lot 3 in square 455, in the City of Washington), on the 18th day of July, 1818, for the term of ninety-nine years, renewable forever.

Said lease contains the condition—

"That if the rent or any part thereof shall be in arrears, and unpaid for the space of thirty days next after the time at which the same is reserved to be paid as above, being first lawfully demanded, that then it shall and may be lawful to and for the said John, his heirs, and assigns, into the demised premises or any part thereof, in the name of the whole to re-enter and the same to have again repossess, reoccupy and enjoy, as in his or their former estate *until all*

such arrearages of rent with legal interest from the time at which said rent shall have become payable, and all and every cost, charge and expense incurred by reason of the non-payment of said rent shall be lawfully satisfied and paid, or make distress therefor at his or their option."

And also contains a covenant of renewal—

"At any time during the continuance of this present demise on the request and at the cost and charge of the said Noah, his executors, administrators or assigns, &c."

That said Noah, held the said premises until about the year 1833 or 1834.

That he had put large and valuable improvements on the lot.

That John Van Ness in default of payment of rent reentered upon the premises and occupied them.

That after the death of John Van Ness, commissioners assigned to Matilda Van Ness, one of his heirs-at-law, the said premises by deed in 184—, duly recorded. That said Matilda, by deed dated —— —— and duly recorded, conveyed said property to William G. Deal and others, and that defendants hold under title derived from said Matilda and her assigns.

That complainant has offered to pay all back rents, interest, and all just costs, and charges, &c., but defendants have declined to comply with covenants of the deed.

That all the persons entitled to a distributive share of Stinchcomb's estate except one (*a feme covert*), were non-residents of the District of Columbia (beyond seas), and until administration taken by complainant there has been no one within the jurisdiction of the court qualified to prosecute this suit since the death of Noah Stinchcomb.

PRAYERS.

1st. That complainant be permitted to redeem said lot.

2d. An account is prayed.

3d. That defendants be required to pay any balance found due by them.

4th. General relief.

Demurrer by each defendant upon the ground—

1st. That the complainant has not by her bill made and stated a case as entitles her to the relief prayed, or to any relief whatever in a court of equity.

2d. And further, that there is a misjoinder of parties defendant.

I.

This is a case for equitable relief.

"If a man make a lease for years reserving a rent with a condition that if the rent be behind, that the lessor shall re-enter and take the profits, until thereof he be satisfied, then the profits shall be counted as parcel of the satisfaction, and during the time that he so taketh the profits, he shall not have an action of debt for rent, for the satisfaction whereof he taketh the profits.

"But if the condition be, that he shall take the profits until the feoffer (lessor) be satisfied or paid the rent without saying (thereof), or to the like effect, then the profits shall be counted no part of the satisfaction, but to hasten the lessee to pay it, and Littleton here saith, that until he be satisfied he shall take the profits in the mean time to his own use."

This is the rule at law. See Coke, Littleton, Thomas' Ed., Vol. 2, page 119; side paging 102. And in note (32), by the editor we find this language:

"This distinction as to when the profits taken by the lessor after entry are, and when they are not to be taken in satisfaction of rent, is not admitted in equity. For the courts of equity will always make the lessor account to the lessee for the profits of the estate during the time of his being in possession of it, and decree him after he is satisfied

the rent in arrear, and the costs, charges and expenses attending his entry and detention of the lands, to give up the possession to the lessee, and to deliver and pay him the surplus of the profits of the estate, and the money arising thereby."

The clause in a lease permitting a landlord to re-enter for arrearages of rent, &c., "*until*" he be "lawfully satisfied and paid," is in the nature of a penalty for the non-payment of the rent, &c., and is by way of security therefor.

Hill vs. *Barclay*, 18 Ves., p. 60;
Davis vs. *West*, 12 Ves., p. 475;
Fonblauques Equity, book 1, ch. 6, sec. 4, note H;
Story's Eq., Jur., vol., 2, sec. 1,315 and 1316.

See also C. J. Tilghman's opinion in *Bautleon* vs. *Smith* 2 Benney, p. 153, where he states a similar case to the one at bar, and says: "the defendant," (lessee), "would be driven to equity for relief."

II.

The demurrer on the ground of misjoinder of parties defendant cannot in this case be sustained.

"The joinder of parties for protection of their own interests may be illustrated by the case of suits for dealing with property, to which several persons are entitled as coowners, or as tenants for life, and in remainder or as having charges on the estate. In all these cases, if the object proposed is not confined to any particular interest, but affects the *corpus* of the estate, all such persons ought to be parties."

Adams Equity, p. 315.
Mayor of York vs. *Pilkington*, 1 Atkyns, p. 282.
Daniel Chancery Pleading, Perkin's edition, p. 324

"The general rule in equity, is that all persons are to be made parties, who are either legally or equitably interested in the subject matter and result of the suit, however numerous they may be, if they are within the jurisdiction, and it is in a general sense, practicable so to do."

Story Eq., Jur., vol. 2 sec. 1,526.

There is nothing in this record which shows that these defendants do not hold the property in controversy as joint tenants or as tenants in common. The bill is not demurrable either for misjoinder of defendants nor is it multifarious. There is no misjoinder because of several and distinct *demands*. The *demand* is *one* here. There is no misjoinder of defendants, because it would not be a misjoinder nor would it be multifarious), even if the bill showed several titles held by them, derived from John Van Ness. But the bill, as before stated, does not allege that they hold several and distinct titles.

Story Eq. Pl, 285, 285*a*, 533, 537;
3 Price, R., 164;
6 John., ch., R., 150–1;
9 Page, 595, 605;
12 Metc., 323;
2 How., S. C., 619;
6 John, ch., 139.

III.

The demurrer cannot be sustained on the ground that this suit is barred by lapse of time.

The statute of 4 Geo. 2, ch. 28, secs. 2, 3, 4 (in force in the District of Columbia) does not apply to a lease of this kind, nor limit the time within which a tenant under such may have relief in equity.

In Doe Dem., *Darke* vs. *Bowditch*, where ejectment was brought by a landlord under the provisions of Stat. 4 Geo. 2, ch. 28, sec. 2, on a lease containing a condition that on non-payment of rent the landlord "might enter on the premises for the same *until* it be fully paid."

Lord DENMAN, C. J., says:

> "Such a condition would have enabled the lessor to maintain ejectment at common law, fulfilling the requisite formalities, and he would have been entitled to hold the premises until the arrears were satisfied. But when they were satisfied, the lessee might re-enter and hold the premises under the lease as before."

The effect of such a lease as that in question is stated in Coke, Lit. 203*a*.

See 8 Q. B., 978; and he held, the remedy under that statute did not apply to leases which contained a covenant of re-entry by the lessor for arrearages of rent, &c., *until* satisfaction.

As to real actions the statute of 21 James, 1st ch., 16, with its saving clauses, is still in force in the District of Columbia, the District inheriting this statute from the State of Maryland.

And we say that the Statute of Limitations would not bar ejectment in such a case as this.

At law, when the statute of limitations is relied upon as a defence, it must be pleaded that the time within which the bringing of an action is limited has expired, and plaintiff can reply and rely on the saving clauses.

Though the objection may be raised on demurrer in a suit in equity, when it appears upon the face of the bill that the suit is barred by lapse of time, yet if, on demurrer, it does not appear from the bill positively and affirmatively that the time has expired within which an action might be brought at law, no legal presumption to that effect arises, and the demurrer for this cause must fail.

John P. Van Ness re-entered upon the premises in controversy for arrearages of rent, &c., some time after or dur-

ing the years 1833 or 1834, up to which time Noah Stinchcomb held possession.

What amount was due him at that time the bill does not state. He re-entered under a covenant of the lease, and had a right to hold only *until* all such arrearages, &c., should be lawfully satisfied and paid; either by payments made him by Stinchcomb, or by perception of the rents, issues and profits of the real estate. Having entered by virtue of the clause of re-entry in the lease, we assume as a fact, which admits of no controversy, that the Statute of Limitations did not commence to run, nor could John P. Van Ness hold adversely until by perception of the profits of the estate, or otherwise he had been fully paid all arrearages of rent, &c.; nor even then, until by some act he manifested his intention to hold adversely to Stinchcomb.

There is nothing in the record which shows that these arrearages had been satisfied and paid before the death of Noah Stinchcomb, which occurred in 1841. On the contrary, every presumption arises in favor of the fact that they had not been paid or satisfied at his death. John P. Van Ness then not holding adversely before the death of Noah, and the statute of limitations not having commenced to run in his lifetime, the allegations of the tenth paragraph of the bill show that since then, until a short time before the institution of this suit, all parties interested in bringing the same were under disabilities—Infants; Femme Covert, and beyond seas.

There was no one in existence, after the death of Noah Stinchcomb until the plaintiff took out letters of administration on his estate, qualified to institute process.

Angel on Lim., p. 49.
5th *Bam. & Ald.*, p. 204, (*Murray* vs. *East India Co.*)
Perry vs. *Jenkins*—1 *Mylne & Craig*, ch. 118.
9th *Leigh* (*Va.*), 79.
4th *Grattan* (*Va.*), 1.

The case in 4th Grattan allowed a recovery of ground rents, reserved under a conveyance by Lord Fairfax, after a period of thirty-five years, as against subsequent assignees by the administrator of the purchase of the rents.

In the case of *Fishwick's Administrator* vs. *Sewell*, 4th Harris & Johnston, 393 (Md.), because of want of an administrator of an estate, trover was brought in 1812 for a slave wrongfully taken in 1765, after a period of forty-seven years, and the statute of limitations was held not to apply.

In *Ferris* vs. *Williams*, 1 Cr. C. C., 475, it was held that the State of Delaware is beyond seas in regard to the District of Columbia, within the meaning of the act. See also Angel on Limitations, paragraph 200.

The analogy of a Welsh mortgage may be invoked: In regard to Welsh mortgages, in 2 Atkyns, 360, Lord Hardwick, in a case that arose after the lapse of more than forty years, where no interest had been paid or account taken, said that no bar arises from length of time, for "the mortgagee here was only in the nature of a tenant by elegit, and as soon as his principal and interest were paid his estate ceased." See also *Lawly* vs. *Hooper*, 3 Atk., 280.

Of estates by elegit: Where a moiety of the lands are delivered to the creditor "at a reasonable price and extent, to be holden as a freehold *until* the debt shall be thereof levied." 3 Bl. Com., 419; 2 same, 160; 1 Th. Co. Lit. 487.

Of ground rents: "Mere lapse of time, without demand of payment, is not sufficient to raise presumption that a ground rent created by a valid deed has been released or otherwise extinguished." *Trustees of St. Mary's Church* vs. *Miles*, 1st Wharton, 229; also 4th Grattan, p. 1, above cited: *McQuesney* vs. *Heister*, 9th Casey, 435.

Of a condition—for the performance of which no day is assigned: The party to perform has his lifetime within which to do it; can only be hastened by request. 2 Minors' Inst., 254, 280–2; Thos. Co. Lt., 45 & n. E., 1; Bac. Abr., Condition (P.) 3.

In this case the lessee has during the term to redeem.

TH. JESUP MILLER,
R. B. LEWIS,
CAZENOVE G. LEE,
Solicitors for Complainant.

THIS INDENTURE made this Eighteenth day of July in the year of our Lord Eighteen hundred & eighteen Between John P. Van Ness and Marcia Van Ness, his wife, both of the City of Washington of the one part, and Noah Stinchcomb, of the same place, of the other part, Witnesseth that the said John and Marcia, for and in consideration of the payment of, the rent herein mentioned & reserved, have demised, leased and to farm let, and by these presents Do demise, lease and to farm let, unto the said Noah, his executors, administrators and assigns, Lot numbered Three in Square Four hundred & fifty five in said City, and all the privileges, advantages and appurtenances to the said lot belonging or in any wise appertaining: To have and to hold the said lot of ground and premises, with the appurtenances, for and during the terms of Ninety Nine years, fully to be compleat & ended, from the first day of July Instant, unto the said Noah his executors, administrators and assigns, yielding & paying therefor unto the said John his heirs and assigns the yearly rent or sum of Eighty one Dollars and fifty five Cents, together with all taxes, assessments and public dues laid, or to be laid, thereon since the said first Instant, that is, the one half or forty dollars and seventy-seven and an-half-Cents to be paid every half year on the first day of January and on the first day of July in every year during the continuance of this term, the first payment of forty dollars and $77\frac{1}{2}$–100 to be on the first day of January next:— Provided always that if the said rent or any part thereof shall be in arrear & unpaid for the space of Thirty days next after the time at which the same is reserved to be paid, as above, being first lawfully demanded, that then it shall and may be lawful to and for the said John his heirs and assigns into the demised premises or any part thereof, in the name of the whole, to re-enter, and the same to have again, re-possess, occupy and enjoy, as in his or their former estate, until all such arrearages of rent with legal Interest from the time at which said rent shall have become payable, & all and every cost, charge & expence incurred by reason of the non-payment of said rent shall be lawfully satisfied & paid, or make distress therefor, at his or their option.— And the said Noah does for himself his heirs,

executors, administrators, administrators and assigns, covenant & agree with the said John his heirs and assigns, that he the said Noah, his heirs, executors, administrators & assigns, shall & will well & truly pay or cause to be paid unto the said John his heirs & assigns, the above reserved rent at the times above limited for payment of the same, and in case of non-payment of said rent or any part thereof, at the times limited as aforesaid, shall and will also pay legal Interest on the amount due from the respective days of payment on which the said rent is agreed to be paid, to the said John his heirs and assigns; and shall and will also pay all taxes, charges and Impositions accruing or to grow due on said lot, unto the proper officer authorized to collect the same.—And the said John and Marcia for themselves their heirs & assigns, do covenant and grant to and with the said Noah his executors, administrators & assigns that they the said John and Marcia their heirs and assigns, at any time or times hereafter during the continuance of this present demise, on the request, and at the cost & charge of the said Noah, his executors, administrators or assigns, and on his or their payment to the said John his heirs or assigns, of the sum of one dollar, shall and will make & execute, or cause to be made and executed, a new lease of the above demised premises for other Ninety Nine years, to commence and take effect from, & at, the end of the term for which the same is above demised, subject to the same rent, and under the like covenants as are hereinbefore mentioned, so that this present demise may be renewed and renewable forever.—In witness whereof the parties to these presents have hereunto set their hands and seals the day & year first above written.

JOHN P. VAN NESS [L. S.]
MARIA VAN NESS [L. S.]
NOAH STINCHCOMB [L. S.]

Sealed & Delivered
In presence of—
JOSEPH CASSIN
R. S. BRISCOE

District of Columbia, Washington County ss.

On this twenty-first day of July 1818, before us the Subscribers two of the Justices of the peace personally appeared John P. Van Ness and Maria Van Ness, his wife, of the

City of Washington, the parties-lessors, and Noah Stinchcomb, of the same place, the party-lessee, in the annexed Instrument of writing named, and severally acknowledged the said Instrument of writing or Lease to be their respective Act and Deed, according to the true Intent and meaning thereof.—Taken & Certified the day & year above written.

JOSEPH CASSIN
R. S. BRISCOE

[Endorsement.]

JOHN P. VAN NESS &
MARCIA VAN NESS
To
NOAH STINCHCOMB

Lease of Lot 3 in Sq. 455 July 1818 Received November 30th 1818 to be recorded and the same day was recorded in Liber, A. T. No. 44, 227 228 229 and 230 one of the Land records for Washington County in the district of Columbia and examined by Wm. Brent, ck.

SUPREME COURT U.S.
FILED
NOV 1 1882
JAMES H. McKENNEY, Clerk.

16-395

IN THE

Supreme Court of the United States

OCTOBER TERM, 1882.

CATHARINE LANSDALE,
Administratrix, Appellant,

vs.

ADDISON M. SMITH ET AL,
Appellees.

No. 117.

Brief on behalf of Appellees.

The complainant in this cause filed her bill in the equity branch of the Supreme Court of the District of Columbia, April 12, 1878, alleging that she is the administratrix of the estate of Noah Stinchcomb, who died in said District February 11, 1841; and that she was appointed such administratrix, in said Supreme Court, March 12, 1878.

The scheme of the bill is to compel an account by defendants of the rents and profits of lot 3, square 455, in Washington City, from about 1833, and an account of taxes, rents, interest, costs, &c., due from complainant's estate, by reason of default under the provisions of the lease described in the bill (a copy of which is annexed to appellant's brief),

and after such accounts shall be taken, to off-set one against the other, and decree that defendants pay complainant the balance in her favor; and that complainant may be thus permitted to redeem the said lot from forfeiture under said lease.

The lease provides that in case of default in paying rent the lessor, his heirs, and assigns may re-enter and "have again, repossess, occupy, and enjoy" the said premises, *as in his or their former estate*, until such arrearages, &c., are paid, or said lessor may make distress therefor. (R., p. 1.)

Noah Stinchcomb defaulted sometime prior to 1833 or 4, and the lessor about that time re-entered, thereby electing to take back the property *as in his former estate* (R., p. 2); and thereafter, and for seven or eight years before the death of complainant's intestate, said lessor remained in undisputed possession, both parties, lessor and lessee, by their actions, treating the said lease as terminated.

The demurrer to the bill is on two grounds: misjoinder of parties defendant, and want of equity.

We prefer to place the defense in this argument solely on the broad ground that the facts stated do not entitle the complainant to any relief in a Court of Equity.

I.

The lease, having been determined by the default and re-entry, cannot be reinstated in any court without first paying in full the rents, taxes, expenses, and interest agreed to be paid, which payment has not been made or tendered.

The possession of the *lessor*, after re-entry, is as *absolute owner*, until such time as the *lessee* shall make such payment, and the laws applicable to a *mortgagee* in possession, or a *tenant* by *elegit*, do not apply to the possession of such *lessor*.

If he occupies as in his former estate, that is, as *absolute*

owner, of course there is no obligation resting on him to account to any one for the income received, and a Court of Equity cannot change the terms of the contract in that respect.

II.

The lessor re-entered and held possession for seven or eight years before the death of the lessee without objection on the part of said lessee, or effort to recover his term, or pay the stipulated sums; and such lapse of time raises a strong presumption of fact that there was such a mutual understanding between said parties, taken with the continued change of possession, as amounted to a surrender of the said lease by operation of law.

Taylor's Landlord and Tenant, Sec. 515;
Talbot vs. *Whipple*, 14 Allen, 180;
Grimman vs. *Legge*, 8 B. & C., 324.

III.

If such continued change of possession was not by the consent of said lessee, he was guilty of laches in not making a claim to be re-instated in his possession; and the complainant is now estopped by such unexplained laches on the part of her intestate.

Clarke vs. *Boorman's Ex'rs*, 18 Wall., 493.

IV.

If the re-entry and continued holding by the lessor was not by *consent*, it was certainly with the *knowledge* of the *lessee*, and operated as a forfeiture of the lease; and in no case will a Court of Equity interfere to set aside a forfeiture where it has not been the result of *mistake* or *accident*, and then only when the injury resulting to the defendant can be clearly ascertained, and full compensation made therefor by the complainant.

Taylor's Landlord and Tenant, Sec. 496;
Baxter vs. *Lansing*, 7 Paige, 350;
Sheets vs. *Selden*, 7 Wall., 416–421.

In case of forfeiture by reason of failure to keep premises insured, equity will not interfere.

White vs. *Warner*, 2 Merivale, 459.

V.

No sufficient explanation or excuse for the delay of complainant, or her intestate, in moving in this matter can be found in the bill, and this court has held that such excuse must appear in the pleading, and therefore the question is properly presented by the demurrer.

Badger vs. *Badger*, 2 Wall., 87–95;
Burke vs. *Smith*, 16 Wall., 400;
Maxwell vs. *Kennedy*, 8 How., 210;
State of R. I., &c., vs. *Mass.*, 15 Pet., 233;
1 Dan'l Ch. Pr, pp. 584–5–6 and notes.

Equity always discourages stale demands.

Angell on Limitations, Sec 25;
Godden vs. *Kimmell*, 99 U. S., 201;
Sullivan vs. *Portland R. R. Co.*, 94 U. S., 811;
Wagner vs. *Baird*, 7 How., 234.

Without further suggestion we say that it would be, now, impracticable to take the account asked for since 1833–4, the lessor having been dead about 40 years, and the property divided and improved by separate houses, owned by the several defendants separately, and by many others prior to them, and the witnesses being dead and evidence destroyed or lost by time; and we therefore submit that the decree below should be affirmed.

JAS. S. EDWARDS,
JOB BARNARD,
Solicitors for Defendants.

16-395

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. 962.

HENRY SEYMOUR KING, APPELLANT,

vs.

FRANKLIN C. CORNELL, ADMINISTRATOR OF EZRA CORNELL, DECEASED; THE UTICA, ITHACA AND ELMIRA RAILROAD COMPANY ET AL.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF NEW YORK.

FILED OCTOBER 4, 1882.